

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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689 EATERY CORP., etc., *et ano.*, :
Plaintiffs, :

- against -

Civil Action No.
02 CV 4431 (LJL)

THE CITY OF NEW YORK, et al., :
Defendants. :

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59 MURRAY ENTERPRISES INC., etc., *et al.*, :
Plaintiffs, :

- against -

Civil Action No.
02 CV 4432 (LJL)

THE CITY OF NEW YORK, et al., :
Defendants. :

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CLUB AT 60TH STREET, INC., etc., *et al.*, :
Plaintiffs, :

- against -

Civil Action No.
02 CV 8333 (LJL)

THE CITY OF NEW YORK, :
Defendant. :

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336 LLC., etc., *et al.*, :
Plaintiffs, :

- against -

Civil Action No.
18 CV 3732 (LJL)

THE CITY OF NEW YORK, *et al.*, :
Defendants. :

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**TRIAL DECLARATION AND SUPPLEMENTAL DECLARATION OF MICHAEL
BERZAK IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT**

I, MICHAEL BERZAK hereby declare the following pursuant to 28 USC §1746:

1. I submit this declaration on behalf of the above-entitled Plaintiffs to supplement my Declaration filed in these four actions on September 16, 2022, in support of the Club Plaintiffs' current motions for partial summary judgment on the issues of permitting and vesting of adult businesses.

2. I am aware that pursuant to Buildings Bulletin 2020-005 issued on April 2, 2020, once the 2001 Amendments to the City's adult zoning law become effective, the City will accept professionally certified applications for construction document approval and/or building permits.

3. I have been filing applications with New York City's Department of Buildings (DOB) for building permits and constructions documents for 33 years and have filed hundreds of such applications for adult entertainment uses.

4. I have professionally certified such applications for non-adult uses but am generally reluctant to do so when the application will require a change in the Certificate of Occupancy. The reason for this is the risk of liability associated with any factor that may place the certification at risk.

5. When and if the 2001 Amendments become enforceable and the bar to professional certification of adult business applications is removed, I would not, at that time ever professionally certify such an application if it was for a change in the Certificate of Occupancy to allow an adult use at a location not previously authorized for an adult use. The reason for this is the *extreme* risk of liability resulting from a later determination by the City that any uses within 500 feet of the applicant's use might be deemed a disqualifying use.

6. It can be extremely difficult to predict how DOB will rule on whether a particular nearby location is either a disqualifying house of worship or school and the cost of a wrong guess could be astronomical.

7. Additionally, if the proposed adult use is in an area near any large multi-use buildings, there is substantially more risk since DOB's records do not identify all the uses in multi-use buildings.

8. For these same reasons, I believe it is extremely unlikely that *any* responsible architect is likely to be willing to professionally certify an adult business permit application involving a change of use to allow an adult use at a site not previously authorized for such a use.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of May, 2023, within the United States of America, at New York, New York.

MICHAEL D. BERZAK

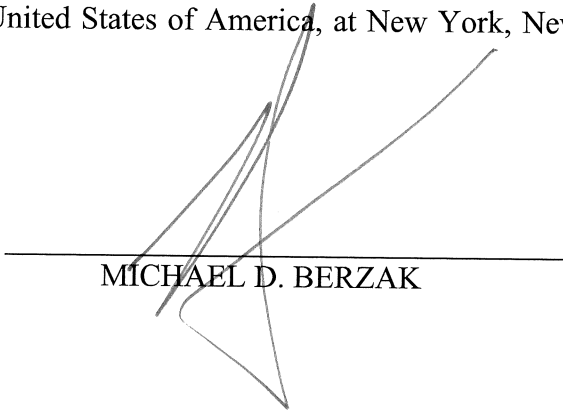
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8. For these same reasons, I believe it is extremely unlikely that *any* responsible architect is likely to be willing to professionally certify an adult business permit application involving a change of use to allow an adult use at a site not previously authorized for such a use.

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MICHAEL D. BERZAK